

NOV 24 1986

JOSEPH F. SPANIOLO, JR.
CLERK

No. 86-636

(4)

in the
Supreme Court
of the
United States

October Term, 1986

MARTIN COUNTY and OKEECHOBEE COUNTY,
Florida,

Petitioners,

vs.

ROBERT MAKEMSON,
ROBERT LEE DENNIS, *et al.*,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Florida

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

Petitioners file this reply brief to the two briefs of respondents in opposition to the petition for writ of certiorari to the Supreme Court of Florida.

ARGUMENT

I

THE FLORIDA RULINGS NECESSARILY REST ON THE FEDERAL GROUND OF THE SIXTH AMENDMENT.

Respondents assert that the Florida rulings rest on a wholly independent and adequate state ground—the inherent power of state courts and the Florida constitutional provisions respecting separation of powers.

That assertion is misplaced. Repeatedly in the *Makemson* opinion, the Florida Supreme Court finds that the maximum fee statute interferes with “the defendant’s sixth amendment right ‘to have the assistance of counsel in his defence’” (Pet. App. 6), and “[m]ore fundamentally . . . the provision as so construed interferes with the sixth amendment right to counsel” (Pet. App. 7), and “the sixth amendment’s guarantee of effective assistance of counsel at least equals in fundamentality and importance its sister [Sixth Amendment] provision setting forth the right of the accused ‘to have compulsory process for obtaining witnesses in his favor’” (Pet. App. 8). Only *Gideon v. Wainwright*, 372 U.S. 335 (1963), is cited in support of these federal propositions (Pet. App. 10).

The inherent power of state courts and the separation of state powers, referred to in the opinion at Pet. App. 6-7, are viewed as propositions purely derivative from the perceived Sixth Amendment flaw in the Florida statute. Thus, the court views the statute as impinging upon the state court’s “inherent power to ensure

[enforcement of the Sixth Amendment guarantee of] the adequate representation of the criminally accused" (Pet. App. 6) and, in the court's view, the statute, as construed to preclude judicial implementation of the Sixth Amendment, "impermissibly encroaches upon a sensitive area of judicial concern, and therefore, violates [the separation of powers provisions] of the Florida constitution" (Pet. App. 6).

But for the Sixth Amendment violation, the Florida Supreme Court's opinion means that there would in the court's view be no curtailment of the inherent judicial power to enforce the Sixth Amendment and no violation of the separation of powers doctrine by which courts have exclusive power to implement the Sixth Amendment. Such state law propositions are viewed merely as enforcement appendages to the Sixth Amendment right to counsel. It is that Sixth Amendment right to counsel that remains the fundamental and sole basis of the Florida Supreme Court's rulings.

In other words, the Florida Supreme Court "felt compelled by what it understood to be federal constitutional considerations to construe and apply its own law in the manner it did." *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 568 (1972).

In addition, the federal and the state grounds "are so interwoven that we are unable to conclude that the judgment rests upon an independent interpretation of the state law." *State Tax Commission v. Van Cott*, 306 U.S. 511, 514 (1939). In any event, the Florida court has not indicated "clearly and expressly" that it based its decision on separate and adequate state grounds. *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983).

Thus, this Court has jurisdiction over the rulings of the Florida Supreme Court.

II

THESE CASES ARE RIPE FOR ADJUDICATION BY THIS COURT.

The Brief of Respondent Dennis at pages 4-5 claims that the Sixth Amendment issue is not appropriate for consideration by this Court, because the Petitioners, Martin County and Okeechobee County, have no Sixth Amendment right to counsel and thus there is no case or controversy ripe for adjudication by this Court. To state that objection is to answer it.

The Florida Supreme Court based its decision not on any Sixth Amendment rights of the counties or the state but upon the asserted inability of the state courts to provide effective counsel for criminal defendants who do have Sixth Amendment rights. Respondent's arguments regarding standing are without merit.

CONCLUSION

For the foregoing reasons, this Court has jurisdiction and the writ of certiorari should be granted.

Respectfully submitted,

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